

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 31:030. Direct pay authorization.

5 RELATES TO: KRS 139.010, 139.240, 139.250, 139.260, 139.540, 139.550, 139.590,
6 139.660, 139.710, 139.720

7 STATUTORY AUTHORITY: KRS 131.130, 139.260, 139.660, 139.720

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1), 139.260, and 139.710
9 authorized the Department of Revenue to promulgate administrative regulations for the: (1)
10 assessment, collection, refunding, administration, and enforcement of Kentucky tax laws; and (2)
11 direct pay authorization. This administrative regulation establishes the requirements and
12 procedures for the direct payment of Kentucky sales and use tax on purchases of tangible personal
13 property, digital property, or the services specifically enumerated in KRS 139.200(g) through (q)
14 according to the provisions of KRS 139.260(3),~~[-or digital property]~~ excluding energy and energy
15 producing fuels.

16 Section 1. Definitions. (1) "Direct pay authorization" or "DPA" means an authorization issued
17 by the Department of Revenue that permits a taxpayer to report Kentucky sales and use tax directly
18 to the department~~[cabinet]~~ on all purchases of tangible personal property, digital property, or the
19 services specifically enumerated in KRS 139.200(g) through (q) according to the provisions of
20 KRS 139.260(3),~~[-or digital property]~~ excluding energy and energy-producing fuels.

1 enumerated in KRS 139.200(g) through (q) according to the provisions of KRS 139.260(3),[or
2 ~~tangible personal property,~~] excluding energy and energy-producing fuels, of at least
3 \$10,000,000[ten (10) million dollars] for use in its[his] Kentucky operations in the preceding
4 calendar or fiscal year, as applicable.

5 Section 3. Application. (1) An applicant shall apply to the department for a DPA by submitting
6 a fully completed Revenue Form 51A112, "Application for Direct Pay Authorization".

7 (2) The application shall include:

8 (a) If an applicant is engaged in business and has property, other than office furniture and
9 equipment, located in more than one (1) state, the location of the applicant's home office, and
10 plants or places of business;

11 (b) If the applicant is not engaged in business and does not have property, other than office
12 furniture and equipment, located in more than one (1) state, the amount of tangible property, digital
13 property, and the services specifically enumerated in KRS 139.200(g) through (q) according to the
14 provisions of KRS 139.260(3),[and digital property] purchased for use in the applicant's Kentucky
15 business operations in the last calendar or fiscal year, as applicable;

16 (c) Statements relating to records and documentation required by Sections 2(3) and (4) and 7
17 of this administrative regulation;

18 (d) Most recent year's financial statement certified by the applicant's chief financial officer or
19 a certified public accountant; and

20 (e) A detailed description of the records maintained to document that the amount of taxable
21 purchases is properly reported.

22 Section 4. Requirements. A DPA holder shall:

23 (1) Furnish all of its ~~[his]~~ sellers or retailers, excluding sellers or retailers of energy and energy-

1 securing the payment of the sales or use taxes to the department in an amount not less than \$75,000
2 and not greater than three (3) times the estimated monthly liability.

3 Section 9. Transfer of Authorization. (1) A DPA shall not be transferable upon the sale, lease,
4 or other transfer of the business.

5 (2) A DPA holder shall notify the department within ten (10) days of the effective date of the
6 sale, lease, or other transfer of the business.

7 Section 10. Termination. (1) The department shall terminate a DPA if the DPA holder:

8 (a) Fails or ceases to be an eligible taxpayer;

9 (b) Fails to timely file its sales and use tax returns and timely pay any tax due; or

10 (c) Fails to comply with any of the provisions of this administrative regulation.

11 (2)(a) The department shall notify a DPA holder of the termination by certified mail at its[his]
12 last known address.

13 (b) Upon receipt of the notification of termination, a DPA holder shall notify all sellers or
14 retailers within thirty (30) days of the date of termination.

15 (3) The effective date of the termination shall be the date of the mailing of the termination
16 notice.

17 Section 11. [~~Protests. The denial or termination of a DPA may be protested pursuant to KRS~~
18 ~~131.110.~~


19 ~~—Section 12.]~~ Forms. The forms listed herein may be inspected, copied, or obtained, subject to
20 applicable copyright law, at:

21 (1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky
22 40601;~~[40620;~~

23 (2) At a Kentucky Taxpayer Service Center during business hours; or

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APPROVED BY AGENCY:



DANIEL P. BORK, COMMISSIONER
Department of Revenue
Finance and Administration Cabinet

JUNE 6, 2019
Date

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 31:030

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation is an amendment that updates regulatory language to conform to recent statutory language revisions.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information currently contained in the regulation. Repealed statutory references are removed and replaced with the updated statutory reference.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed amendment updates regulatory language to conform with KRS 131.130 and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates regulatory language to address outdated information currently contained in the regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals, businesses, organizations, or state and local governments that access the amended regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: No actions are necessary to comply with the amendment.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no cost to comply with the amended regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Anyone who accesses the amended regulation will benefit from the updated information contained therein.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 31:030

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated for any state or local government agency by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: